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Arizona Corporation Commission

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Attorneys for Western Resource Advocates  
and The Vote Solar Initiative

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED BY

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BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

IN THE MATTER OF ARIZONA PUBLIC  
SERVICE COMPANY REQUEST FOR  
APPROVAL OF UPDATED GREEN POWER  
RATE SCHEDULE GPS-1, GPS-2, AND GPS-3.

Docket No. E-01345A-10-0394

IN THE MATTER OF THE APPLICATION OF  
ARIZONA PUBLIC SERVICE COMPANY FOR  
APPROVAL OF ITS 2013 RENEWABLE  
ENERGY STANDARD IMPLEMENTATION FOR  
RESET OF RENEWABLE ENERGY ADJUSTOR.

Docket No. E-01345A-12-0290

IN THE MATTER OF THE APPLICATION OF  
TUCSON ELECTRIC POWER COMPANY FOR  
APPROVAL OF ITS 2013 RENEWABLE  
ENERGY STANDARD IMPLEMENTATION  
PLAN AND DISTRIBUTED ENERGY  
ADMINISTRATIVE PLAN AND REQUEST FOR  
RESET OF RENEWABLE ENERGY ADJUSTOR.

Docket No. E-01933A-12-0296

IN THE MATTER OF THE APPLICATION OF  
UNS ELECTRIC, INC. FOR APPROVAL OF ITS  
2013 RENEWABLE ENERGY STANDARD  
IMPLEMENTATION PLAN AND DISTRIBUTED  
ENERGY ADMINISTRATIVE PLAN AND  
REQUEST FOR RESET OF RENEWABLE  
ENERGY ADJUSTOR.

Docket No. E-04204A-12-0297

REPLY BRIEF OF WESTERN  
RESOURCE ADVOCATES AND THE  
VOTE SOLAR INITIATIVE

1 Western Resource Advocates (“WRA”) and The Vote Solar Initiative (“Vote  
2 Solar”) submit the following Reply brief. This brief addresses several issues including  
3 some parties’ misunderstanding of RECs and REC markets, the acquisition of RECs, the  
4 double counting problem, and the distributed generation (DG) carve out.

5 **A. Misunderstanding of RECs and REC Markets**

6 Some of the positions taken by parties to this docket reflect a fundamental  
7 misunderstanding of the role of RECs and of how REC prices are determined. Principles  
8 of RECs and REC markets were summarized in WRA/Vote Solar’s opening brief.  
9 However, several misunderstandings persist as explained below.

10 APS states (Closing Brief, p. 4, starting on line 15) that no market exists into  
11 which Arizona DG REC owners could sell their RECs. Witnesses Huber and Martin,  
12 cited by APS, actually said that they did not know how many Arizona distributed  
13 generation RECs were sold. CRS further described the volume of activity in the  
14 voluntary market: “In 2011, Green-e Energy verification found that Arizona had 2,986  
15 residential customers and 146 non-residential customers purchase renewable energy in  
16 the voluntary market, and Arizona renewable generators generated 29,997 MWh that  
17 were sold into the voluntary REC market to customers inside and outside of the state.”  
18 (Jennifer Martin, Direct Testimony, unnumbered p. 7). Up until recently, nearly all DG  
19 RECs in Arizona have been purchased by utilities through their DG incentives. If  
20 incentives are no longer needed or allowed, and the Commission does not authorize a  
21 track and monitor type of policy which creates a double counting issue, then the future  
22 volume of Arizona DG RECs sold in the voluntary market may increase as the  
23 compliance market evaporates.

24 APS further states (Closing Brief, p. 4, line 18) that “Without a change to the  
25 REST rules, it is not clear if an owner of RECs can sell them to anyone other than a

1 utility as RECs are defined under Arizona law.” This statement is untrue. RECs exist  
2 even if the Commission had no REST (Berry surrebuttal, p. 4 starting at line 33). The  
3 Commission does not regulate customers or what customers do with their property.  
4 Arizonans buy and sell RECs as noted above and Arizona customers can and do retain  
5 their RECs to meet their own clean energy goals (see, for example, the U.S. Department  
6 of Defense and All Other Federal Executive Agencies’ Brief, pp. 2-3) .

7 APS indicates (Closing Brief, p. 5, starting on line 6) that rules created by a  
8 California non-profit should not determine Arizona’s energy policy. CRS is not  
9 determining Arizona energy policy – it assures buyers of RECs that they are getting what  
10 they are paying for. The Commission should understand the consequences of its policies:  
11 the ability or inability of customers to sell or use their RECs is an important consequence  
12 of the choices presented in this docket. Further, the fact that CRS is located in California  
13 is immaterial. CRS’s policies encompass North America. APS does not ignore national  
14 reliability standards even though an out of state entity (the North American Electric  
15 Reliability Corporation) develops these standards.

16 TEP and UNS attempt to obfuscate the nature of RECs by implying that the RECs  
17 needed to comply with the REST are somehow different than the RECs traded in  
18 voluntary markets, apparently because some RECs allegedly do not include  
19 environmental attributes (Initial Post-Hearing Brief, pp. 10, 12-14). In actuality, RECs  
20 represent environmental attributes for Arizona REST compliance purposes and for other  
21 purposes.

22 A.A.C. R14-2-1804 E states that “If an Affected Utility trades or sells  
23 environmental pollution reduction credits or any other environmental attributes  
24 associated with kWh produced by an Eligible Renewable Energy Resource, the Affected  
25 Utility may not apply Renewable Energy Credits derived from that same kWh to satisfy

1 the requirements of these rules.” This means that the RECs used to satisfy the REST  
2 requirements must include the environmental attributes.

3 TEP’s 2013 Up-Front Incentive Renewable Energy Credit Purchase Agreement  
4 (Leased Residential Grid-Tied Solar PV), Section 1.8, defines RECs as follows:

5 *“REC” means any and all environmental credits, attributes and benefits,*  
6 *including greenhouse gas or emissions reductions and any associated*  
7 *credits, environmental air quality credits, offsets, allowances and benefits*  
8 *howsoever entitled, actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, mercury,*  
9 *and other emissions avoided, credits towards achieving local, national or*  
10 *international renewable portfolio standards, green tags, and any and all*  
11 *other green energy or other environmental benefits associated with the*  
12 *generation of renewable energy (regardless of how any present or future*  
13 *law or regulation attributes or allocates such characteristics), including*  
14 *those created under the REST.*

15 In its business dealings, TEP does not exhibit the confusion it seeks to create in  
16 this docket. TEP’s definition of a REC does not distinguish between compliance markets  
17 and voluntary markets – it applies to both. The definition also recognizes that the RECs  
18 represent non-kWh features of renewable energy.

19 More generally, EPA states that a REC “represents the property rights to the  
20 environmental, social, and other nonpower qualities of renewable electricity generation.  
21 A REC, and its associated attributes and benefits, can be sold separately from the  
22 underlying physical electricity associated with a renewable-based generation source.”  
23 (<http://www.epa.gov/greenpower/gpmarket/rec.htm>).

24 Further, despite TEP’s assertion otherwise (TEP/UNS Initial Post-Hearing Brief,  
25 starting on page 16), customers clearly have property rights associated with RECs (Berry  
surrebuttal, p. 4 starting on line 24). The rights include the ability to legitimately claim  
the environmental attributes listed by TEP. It is those rights that are transferred in REC

1 markets (WRA/Vote Solar Opening Brief, starting on p. 10), including TEP's acquisition  
2 of RECs through its credit purchase agreements.

3 **B. Acquisition of RECs.**

4 APS, TEP, and Staff criticize WRA and Vote Solar for proposing an auction  
5 method or standard offer<sup>1</sup> method to acquire RECs (TEP Initial Post-Hearing Brief,  
6 starting on p. 23; Staff Opening Brief, p. 11, APS Closing Brief, p. 6). Their briefs  
7 indicate that an auction or standard offer present administrative difficulties, have  
8 uncertain costs, or cost ratepayers too much. These criticisms are unfounded or distort  
9 what is actually happening.

10 While we agree that utilities should seek to obtain resources at the best price for  
11 ratepayers, Staff's Track and Monitor approach and the original Track and Record  
12 approach both try to get something for nothing by meeting the distributed generation  
13 requirement or reducing the distributed generation requirement by claiming RECs for  
14 regulatory purposes that utilities have not purchased. These proposals devalue RECs  
15 owned by customers or others as discussed in the section on double counting.

16 To obtain RECs at the lowest price supported by the market, WRA and Vote Solar  
17 have recommended either an auction approach or a standard offer. Both approaches are  
18 quite workable as they continue existing practices. Staff's concerns about a vague  
19 process (Staff Opening Brief, p. 11) are easily addressed. The Commission has used a  
20 standard offer approach for years by setting an incentive rate for the acquisition of RECs  
21 and Staff has reviewed utility incentive proposals. Indeed, Staff has recommended  
22 incentive levels many times and has experience with dynamic REC market conditions.

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24 <sup>1</sup> Note that Vote Solar's Standard Offer proposal encourages participants to offer RECs at  
25 a price lower than the standard offer, in which case the lowest price RECs would be  
acquired first. See Gilliam Direct Testimony, page 15.

1 Moreover, APS has used an auction approach for performance based incentives so there  
2 is a track record of successful implementation. This is not a voyage into outer space – it’s  
3 a well understood journey over familiar territory.

4 If a utility needs additional RECs to comply with the REST, an auction or standard  
5 offer approach to purchasing RECs will reflect the level of incentive needed. If  
6 incentives are not needed, REC prices will approach zero so there is little impact on  
7 ratepayers when utilities acquire the RECs they need to comply with the distributed  
8 generation requirement under these circumstances.

9 To alleviate concerns over market power or uncertain budgets for REC  
10 acquisition, the Commission could cap the REC price paid by utilities and set a budget  
11 annually for each utility during its review of REST implementation plans. (Berry  
12 surrebuttal p.3, starting on line 1; WRA/Vote Solar Opening Brief, p. 13). Staff, the solar  
13 industry, and other stakeholders can continue to provide advice to the Commission on  
14 setting a standard offer or developing an auction.

15 TEP/UNS (Initial Post-Hearing Brief, p. 25) criticizes WRA for recommending  
16 that the utilities, Staff, and stakeholders work together to develop an auction approach on  
17 the grounds that such collaboration would be cumbersome. APS held such a “technical  
18 conference” when it devised its performance based incentives several years ago. The  
19 discussion was useful and took only a few hours.<sup>2</sup> All the parties would benefit from a  
20 collaborative design for an auction or standard offer. Doing so need not be burdensome  
21 as experience with APS has demonstrated. But not undertaking a collaborative approach  
22 could result in protracted reviews of utilities’ individual implementation plans with  
23 regard to how the standard offer should be set or how an auction should be conducted.

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25 <sup>2</sup> Staff also conducted a series of workshops on developing the uniform credit purchase  
programs as indicated in WRA/Vote Solar’s opening brief, p. 14, starting on line 1.

1           **C.     Double Counting**

2           Staff (Opening Brief, p. 8, starting on line 16), TEP (Initial Post-Hearing Brief,  
3 starting on page 9, line 4, and APS (Closing Brief starting on page 4, line 9) argue that  
4 Staff's Track and Monitor approach does not double count RECs. We disagree for the  
5 reasons set forth in our opening brief (starting on p. 17, line 15; also Berry rebuttal,  
6 starting on p. 2, line 32 to p. 3, line 10). Adjusting the distributed generation requirement  
7 downward as proposed in the Track and Monitor approach constitutes a claim on RECs  
8 without the utilities actually acquiring the RECs from the REC owners. This situation  
9 leaves the REC owner (e.g., a customer with a rooftop solar energy system) in a position  
10 where he or she could not legitimately sell the RECs in the voluntary market nor use the  
11 RECs to meet his or her own renewable energy goals. Thus, the Track and Monitor  
12 approach is unsuitable as a Commission policy because it creates a double counting  
13 dilemma.

14           Moreover, TEP and APS have been careful in their acquisition of RECs to be sure  
15 that the RECs they have acquired are not also claimed by another party (Berry Direct  
16 Testimony, p. 7, starting on line 2). Thus, TEP and APS are sufficiently concerned about  
17 double counting that they address the issue explicitly in their credit purchase agreements.  
18 Double counting is a real issue to the utilities and it should be a real issue to the  
19 Commission.

20           **D.     The DG Carve out**

21           WRA and Vote Solar agree with Staff that the DG carve-out should be retained.  
22 We disagree with TEP/UNS's recommendation that the DG carve-out be eliminated (TEP  
23 Initial Post-Hearing Brief, pp. 26, 30).

24           The fact that incentives are close to zero today is not sufficient reason to abandon  
25 the DG carve out as the Commission may alter net metering practices and change rate

1 designs, both of which could make distributed solar energy economically unattractive in  
2 the absence of incentives (Berry, direct testimony, p. 7, starting on line 35). The  
3 Commission may wish to direct utilities to offer incentives for distributed generation in  
4 the future.

## 5 **CONCLUSIONS**

6 Several approaches have been recommended by the parties on how to meet the  
7 REST distributed generation requirements in the absence of incentives. The Track and  
8 Monitor approach proposed by Staff and supported by APS and TEP/UNS attempts to  
9 create a system in which utilities do not pay for RECs but still claim the RECs for the  
10 purpose of adjusting the distributed generation requirement downward. Thus, Track and  
11 Monitor (and similar approaches) creates a double-counting catch-22 that devalues RECs.

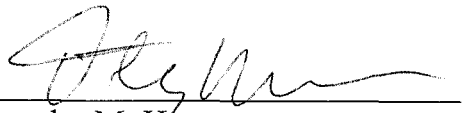
12 WRA and Vote Solar have proposed that the utilities continue to acquire RECs as  
13 needed to meet the distributed generation requirement. The acquisition process should be  
14 designed to obtain the lowest cost for ratepayers and we support either an auction or  
15 regularly updated standard offer to accomplish this. If incentives are rarely needed, REC  
16 prices will be close to zero and have minimal impact on ratepayers. The Commission can  
17 oversee the auction/standard offer approach by setting annual budgets and a cap on REC  
18 prices as it sees fit. WRA's and Vote Solar's recommendations do not create a double  
19 counting problem. Moreover, the auction and standard offer approaches are  
20 continuations of existing practices, not untested ideas.

21 Lastly, Staff and other parties have recommended, often as a second choice,  
22 annual consideration of a waiver of the distributed generation requirement by the  
23 Commission. An occasional waiver may be warranted, but it should not become a  
24 regular occurrence. The Commission has a Renewable Energy Standard and it ought to  
25 be implemented. The best way to implement the REST is for utilities to legitimately

1 acquire RECs from customers, when the utilities need the RECs, and to do so using a  
2 method that minimizes costs for ratepayers. That method is an auction or standard offer.

3 DATED this 12<sup>th</sup> day of September, 2013.

4  
5 ARIZONA CENTER FOR LAW IN  
6 THE PUBLIC INTEREST

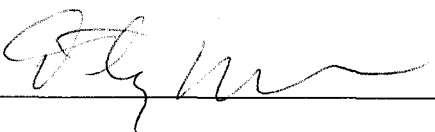
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12 ORIGINAL and 13 COPIES of  
13 the foregoing filed this 12<sup>th</sup> day  
14 of September, 2013 with:

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17 Arizona Corporation Commission  
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Phoenix, AZ 85007

18 COPIES of the foregoing  
19 electronically mailed this  
20 12<sup>th</sup> day of September, 2013 to:

21 All Parties of Record

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24  
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